

REMARKS

Applicant has carefully studied the nonfinal Examiner's Action mailed March 25, 2004, and all references cited therein. The amendment appearing above and these explanatory remarks are believed to be fully responsive to the Action. Accordingly, this important patent application is now believed to be in condition for allowance.

Applicant responds to the outstanding Action by centered headings that correspond to the centered headings employed by the Office, to ensure full response on the merits to each finding of the Office.

Specification

Applicant has amended the specification to omit the words "the present invention." It is believed that the abstract is now in the proper form for publication.

Claim Rejections – 35 USC §112

Applicant acknowledges the quotation of 35 U.S.C. § 112, second paragraph.

Claims 1 through 31 stand rejected under 35 USC §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Specifically, claim 1 is rejected under 35 USC §112, second paragraph, as being incomplete for omitting essential structural cooperative relationships of elements. The Office is not clear as to whether optimization refers to the deployment of the golf car or the associated information and/or data related to the golf car. Applicant believes the rejection is now moot in light of the amendments above, since claim 1 has been canceled.

However, applicant respectfully submits that a plain reading of the preamble indicates that optimization refers to the deployment of the golf car. The words of a claim are to be given their "plain meaning" unless they are defined in the specification (MPEP 2111.01). Since the specification does not contain a clear definition of "optimizing golf car deployment," the words of the claims must be given their plain meaning.¹ Since the word the words "associated

¹ *In re Zletz*, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989); *MSM Investments Co. v. Carolwood Corp.*, 259 F.3d 1335, 1339-40, 59 USPQ2d 1856, 1859-60 (Fed. Cir. 2001).

information and/or data" related to the golf car do not appear in the preamble, a plain reading shows that "optimizing" pertains to the physical golf car deployment.

Claim 2 is similarly rejected under 35 USC §112, second paragraph, as being incomplete for omitting essential structural cooperative relationships of elements. Particularly, the phrase "same time frame" has been found to be indefinite. Applicant has amended claim 2 to read "for the predetermined time frame," the antecedent basis being supplied in the previous line. It is therefore believed that the rejection is now moot and the claim is in proper condition for allowance.

Claims 16 through 18 stand rejected as having an insufficient antecedent basis for the limitation "the step of modifying." Applicant respectfully draws the attention of the Office to paragraph [0018] of the C-I-P application. The relevant paragraph reads:

An operator can derive valuable economic benefits from knowing precisely how his equipment usage ranks in comparison to usage of various groups of other like-operators. The operator can raise URP within the groups by: (1) optimizing marketing and advertising programs, (2) scheduling additional shifts for more productivity, and (3) implementing maintenance programs to gain efficiency.

Paragraph [0019] elaborates further, stating; "[T]he usage data of an individual operational unit is then compared with the benchmark value to quantify the relative success of the individual operational unit. Responsive to the comparison, *modification* may be made in marketing programs, personnel scheduling and maintenance programs." Per MPEP §2111.01, "plain meaning" refers to the meaning given to the term by those of ordinary skill in the art. It is inherent in the art, or in any art, to modify one's practices in response to profitability data. Changing, or modifying, marketing programs, work rotations, and maintenance programs in response to feedback regarding profitability is well known and, although provided, requires no

additional support in the specification. As a result, withdrawal of the rejection on this ground is solicited.

Claims 21 through 23 are similarly rejected as having insufficient antecedent basis. Applicant respectfully draws the attention of the Office to the following paragraphs of the instant specification:

With regard to claim 21, paragraph [0023] reads as follows:

The invention: (1) collects periodic voltage data (typically hourly) from on-board sensor devices on equipment units, (2) passes the data by various communications means to a database store, processes the voltage data, prepares battery performance reports, (3) transmits such reports by various communications means to the BOEM and to the equipment operator, such reports designed to enable the BOEM to monitor the real operating environment in which its product is performing, observe circumstances that cause product failure, develop product improvements using large scale field data versus limited laboratory-test data, document product failures, and verify product warranty claims; such reports also enable the operator to identify failing batteries and change such batteries before they cause equipment downtime or poor performance, and resulting loss of rental income, and/or operational inefficiencies, and/or poor productivity.

Applicant further asserts that it would be known to one skilled in the art to associate a value, here the expressly identified product warranty data, with measurable criteria. For this reason, no specific support is required in the specification as the term is entitled to its customary use. As a result, withdrawal of the rejection on this ground is solicited.

With regard to claim 22, paragraphs [0023] through [0029] clearly delineate the advantages of the present invention with respect to maintenance. For example, paragraph [0023] states that reports generated from the inventive method "enable the operator to identify failing batteries and change such batteries *before* they cause equipment downtime or poor performance." (emphasis added). Clearly identifying a problem and scheduling maintenance to avoid the loss of profitability amounts preventative maintenance. There is simply no requirement that the claim mirror the exact language of the specification when a plain reading lets those of ordinary skill in the art know what the claim entails. As a result, withdrawal of the rejection on this ground is solicited.

With regard to claim 23, paragraph [0024] clearly states "[T]he battery performance as measured by the invention may be transmitted to entities interested in the data, including, but not limited to, original battery manufacturers, fleet owners, and fleet maintenance personnel." (emphasis added). Therefore, there is absolutely no support for the contention that no antecedent basis exists for the claim. As a result, withdrawal of the rejection on this ground is solicited.

With regard to claim 25, paragraph [0027] states the inventive method "transmits such reports by various communications means to the equipment operator, such reports designed to enable the operator to forecast equipment demand patterns and thereby optimize staffing schedules and minimize payroll costs." Again, there is no support for the contention that no antecedent basis exists for the claim. As a result, withdrawal of the rejection on this ground is solicited.

With regard to claim 26, paragraph [0027] continues that the inventive method allows an operator to schedule maintenance on equipment and maintenance on support facilities when equipment downtime will have the least effect on rental income or other productive uses of the equipment. Accordingly there is no support for the contention that no antecedent basis exists for the claim. As a result, withdrawal of the rejection on this ground is solicited.

Finally, with regard to claim 28, paragraph [0032] states in express terms:

Accordingly, an embodiment of the invention includes the steps of confirming golf car inventory based on the golf car identification, establishing a predetermined inventory value and reporting a deviation of the value in the confirmation step. The confirmation may be reported to those having a security interest in the golf cars including, but not limited to, OEMs, insurers and lenders. (emphasis added).

Clearly this provides an antecedent basis for claim 28. As a result, withdrawal of the rejection on this ground is solicited.

In summary, claims 16-19, 21-23, 25-26, and 28 stand rejected as lacking an antecedent basis. In light of the foregoing these rejections are respectfully traversed and withdrawal of same is solicited.

Claim Rejections - 35 U.S.C. § 102(b)

Applicant acknowledges the quotation of 35 U.S.C. § 102(b).

Claims 1-31 stand rejected under 35 U.S.C. § 102(b) as being in public use or on sale. The Office has provided no evidence whatsoever in support of this conclusory statement. The rejection is therefore traversed as being totally unsubstantiated and withdrawal of the rejection on this ground is solicited.

Claims 1-31 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Dodd, Jr. et al (U.S. Patent No. 5,930,742). Reconsideration and withdrawal of this ground of rejection is

requested in view of the cancellation of claim amendments made to independent claim 2 and in view of these remarks explanatory thereof.

Under current patent law anticipation requires that *each and every element of the claimed invention* be disclosed in the prior art.² Furthermore, in order for anticipation to be found the disclosure of each element of the under consideration must be found entirely within the single prior art reference.³

U.S. Patent No. 6,002,729 to *Dodd, Jr. et al.* describes a system of reporting and processing raw data retrieved using a hubmeter. (Column 2, lines 22-23). Attached to the hubmeter is a built-in PC board and microcomputer. (Column 2, lines 36-39). Raw data is collected as the PC board rotates in direct communication with the rotation of the vehicle wheel. (Column 2, lines 38-41). Additionally, the microcomputer reads and stores the rotational count total during periodic timed intervals. (Column 2, lines 49-53). Data is then processed, printed and used to: 1) help monitor vehicle usage, 2) determine when to schedule maintenance, and 3) ensure equivalent vehicle usage. (Column 2, lines 29-35). The C-I-P implements a mechanism similar to that of an odometer based on golf cart axle rotation. *Dodd*, CIP at Paragraph [0007]. The usage data is then stored in an electronic medium where individual golf cart data may be compared for both sales and usage. *Id.* at Paragraph [0009].

The prior art, however, does not describe a method for comparing sales and usage data. Most notably, the '729 patent does not teach, disclose, or suggest the elements of calculating golf car rental income for a predetermined time frame and using that data to compare rental income with usage data. The present invention, therefore, describes a method of ensuring an efficient and profitable operation.

Claim charts are provided for the independent claims 2, 8, 15 and 20. As the claim charts will show the independent claims are patentable over the cited reference, therefore the claims which depend thereon are patentable as a matter of law.

² *Akzo N.V. v. U.S. International Trade Commission*, 1 USPQ 2d 1241, 1245 (Fed. Cir. 1986), *cert. denied*, 482 U.S. 909 (1987) (emphasis added)

³ *W.L. Gore & Associates v. Garlock, Inc.*, 220 USPQ 303, 313 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984)

Current Application	'729 patent to <i>Dodd Jr. et al.</i>
(2) A method for optimizing golf car usage comprising the steps of:	Preamble of claim
recording golf car usage record based on axle revolutions;	Yes
associating a golf car identification with the usage record;	Yes
communicating the usage record and associated identification to a data store;	Yes
calculating total usage data for each golf car identification;	Yes
reporting total usage data;	Yes
calculating golf car rental income data for a predetermined time frame;	No
calculating golf car usage data for the predetermined time frame; and	No
comparing rental income data with usage data whereby discrepancies between actual use and rental records may be resolved.	No

Current Application	'729 patent to <i>Dodd Jr. et al.</i>
(8) A method for optimizing golf car usage comprising the steps of:	Preamble of claim
recording golf car usage record based on axle revolutions;	Yes
associating a golf car identification with the usage record;	Yes
communicating the usage record and associated identification to a data store;	Yes
calculating total usage data for each golf car identification;	Yes
reporting total usage data;	Yes
prioritizing the deployment of golf cars based on total usage data; and	No
communicating a priority order by a visual indicator.	No

Current Application	'729 patent to <i>Dodd Jr. et al.</i>
(15) A method for optimizing golf car usage comprising the steps of:	Preamble of claim
recording golf car usage record based on axle revolutions;	Yes
associating a golf car identification with the usage record;	Yes
communicating the usage record and associated identification to a data store;	Yes
calculating total usage data for each golf car identification;	Yes
reporting total usage data;	Yes
grouping total usage data into operational units;	No
calculating a benchmark value across a plurality of operational units;	No
comparing usage data of an individual operational unit against the benchmark value to quantify the relative success of the individual operational unit.	No

Current Application	'729 patent t <i>Dodd Jr. et al.</i>
(20) A method for optimizing golf car usage comprising the steps of:	Preamble of claim
recording golf car usage record based on axle revolutions;	Yes
associating a golf car identification with the usage record;	Yes
communicating the usage record and associated identification to a data store;	Yes
calculating total usage data for each golf car identification;	Yes
reporting total usage data;	Yes
collecting golf car battery level data concurrently with usage data;	No
correlating battery level data and usage data; and	No
evaluating battery performance based on usage data.	No

Conclusion

Applicant agrees that the art made of record and not relied upon is not more pertinent to the invention than the art cited as a reference against the claims.

Entry of a Notice of Allowance is solicited. If the Office is not fully persuaded as to the merits of Applicant's position, or if an Examiner's Amendment would place the pending claims in condition for allowance, a telephone call to the undersigned at (727) 507-8558 is requested.

Very respectfully,

SMITH & HOPEN

By: 

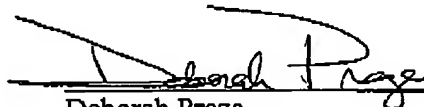
Anton J. Hopen
Suite 220
15950 Bay Vista Drive
Clearwater, FL 33760
(727) 507-8558
Attorneys for Applicant

Dated: April 29, 2004

CERTIFICATE OF FACSIMILE TRANSMISSION**(37 C.F.R. 1.8(a))**

I HEREBY CERTIFY that this Amendment A is being transmitted by facsimile to the United States Patent and Trademark Office, Art Unit 2121, Attn.: Ramesh B. Patel, (703) 746-7239 on April 29, 2004.

Dated: April 29, 2004


Deborah Preza